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90-789

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Fall Term, 1990

Jerry Hegedus,

Petitioner,

vs.

Joanne Limbach, Ohio Tax Comm.

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION FOR REVIEW

Jerry Hegedus, a pro se citizen of the United States and an Ohio resident, hereby seeks declaratory relief from the Great Lakes Interstate Sales Compacts, entered into with several states by the tax commissioner of Ohio, Joanne Limbach. The Compacts, among several provisions, allow other states the power of audit of Ohio residents, allow taxation upon sales by common carrier across state lines, allow shifting of jurisdictional taxation authority and also allow no protective measures or clauses as normally exist in laws dully legislated by the state. In error, the District Court and also the Court of Appeals, have chosen to emphasize the aspect of information gathering of the Compacts, and thus have rejected authority in this matter, invoking the Tax Injunction Act 28, U.S.C. Sec. 1341, as a complete bar to

federal jurisdiction. Jerry Hegedus hereby petitions this Court to review the case and find that federal jurisdiction extends to the Great Lakes Interstate Sales Compacts, and therefrom, declare appropriate judgements as per the original complaint.

The date of the Order of the United States Court of Appeals, for the Sixth District is 2 October 1990, and the Order of the United States District Court is 22 December 1989.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

For the Sixth Circuit

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Jerry Hegedus, the Petitioner herein prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Sixth District entered on 2 October 1990 and the order of the United States District Court entered on 22 December 1989.

OPINIONS BELOW

The 2 October 1990 order of the United States Court of Appeals for the Sixth Circuit, whose decision is herein sought to be reviewed, is appended as pages A-1 to 3. The prior 22 December 1989, court order of the United States District Court for the Southern District of Ohio, Eastern Division, is appended as pates A-5 to 8.

JURISDICTIONAL BASIS

Jurisdiction is conferred upon this Court by the United States Constitutional Amendment No. 14, 28U.S.C. 1343 (3), and commerce clause of Article I, Sec. 8, Cl. 3, which states that only Congress shall have power "..to regulate commerce with foreign nations and among the several states." Furthermore, as per U.S.C.A. 14, due process of law is denied by the Compacts since the Ohio Revised Code, Sec. 5739.02 (B) 10 specifically exempts collections of tax on

"sales not within the taxing power of the state ", and also Sec. 5739.03 (B) which denies the application of tax "when the sale is in interstate commerce..". Again, as per Miller Bros. Co. vs. State of Maryland, 74, S.Ct. 535 (1954), the Compacts cannot shift the collection or payment of use or sales tax to an Ohio resident from another state, in the absence of a jurisdictional basis therein. And again, as per U.S.C.A. 14, due process of law is denied by the Compacts in that audits are instituted for the registration of dealers but not for the purpose intended, namely compliance with existing state tax laws. And lastly, the Compacts are in clear opposition to the desicion in Nat'l Bellas Hess, Inc. vs Department of Revenue, 87 S.Ct. 1389 (1967).

Furthermore, the cases of California Vs. Grace Brethren Church, 457 U.S. 393, 408 (1982) and In re Gillis 836 F.2d 1001-3 (6th

Cir. 1988) do not apply in the present complaint, since both deal with laws, in the former, federal-state laws, and in the later, state laws only. Given a simplistic definition of a law (legislative passed and executive signed, and found in the listing of state statutes), the Compacts by this measure do not meet the criteria of a law, and thus it must be accepted that they are not state law. Furthermore, the Tax Injunction Act, 28 U.S.C. Sec. 1341, states in part:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy and collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

and this statement has an inseparable tendem meaning. The Act applies where state law is challenged and ... state remedies are available. LAW and REMEDIES. Consider the Compacts, they are not Law and

there exist no ready remedies in the body of their provisions for relief. For example, an Ohio buyer of out of state goods is assessed a use tax or a sales tax by another state as a result of the Compact provisions. Does the Ohio buyer seek a plain, speedy and efficient relief in the other State, wherein he has no residency or standing? Conversely, does an Ohio seller, upon being audited by the Ohio department of taxation, file for a plain, speedy and efficient relief within the courts of Ohio (no provision for this relief is given in the body of the Compacts) or the Courts of the State that has requested the audit of the Ohio seller in the first place? Whose jurisdictional authority is to be addressed here by the Ohio seller?

Clearly, the Compacts by all measure and criteria are not state law and by the tendem meaning of the Tax Injunction Act allow no ready remedies in the State courts for relief, making the Act inapplicable in this case.

CONSTITUTIONAL PROVISIONS

The citations of the constitutional and statutory provisions involved in this case are:

1. United States Constitution, Article I, Section 8, Clause 3.

2. United States Constitution, Amendment XIV.

3. 28 U.S.C. Section 1341.

4. Ohio Revised Code, Sections 5739.02 (B) and also 10.

STATEMENT OF THE CASE

In July 16, 1986 Ohio and several states (Indiana, Illinois, Michigan, Minnesota and Wisconsin) entered into an agreement called the Great Lakes Interstate Sales Compact (Exhibit in R-1) for the purpose of increasing compliance with each states' use and sales taxes. As a result, a mass mailing was initiated (Exhibit in R-1) of which belatedly, Jerry Hegedus was a recipient.

On 6 April 1989, Jerry Hegedus filled a complaint (R-1) in the United States District Court (C2-89-0305), seeking declaratory relief in the sense that the Interstate Compacts were unconstitutional and therefore void. After orders for mediation were issed and vacated (R4 to 7), Defendant-Appellee filled a motion for judgment on the pleadings (R-9). On 22 December 1989 United States District Court Judge James L. Graham issued a judgment and order for dismissal of the case (R-14), stating that the Tax

Injunction Act barred the Court from jurisdiction.

On 16 January 1990, Jerry Hegedus filed an appeal (R-15) and brief (R-16) with the United States Court of Appeals, for the Sixth Circuit. On 2 October 1990, the Court of Appeals ruled that the Court has no jurisdiction in the case, invoking the Tax Injunction Act, and affirmed the lower Courts finding of dismissal (R-19).

This Petition for a Writ of Certiorari follows.

ARGUEMENT

I. The Tax Injunction Act does not bar the district courts in excercising jurisdiction since the Interstate Compacts do not meet the tendem meaning of the Act, namely: LAW and REMEDY.

The Tax Injunction Act provides that:

> "The district courts shall not enjoin, suspend or restrain the assessment, levy and collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

The Act applies when two criteria or tests are met or exist. It applies if the challenge is to a State Law AND at the same instant, there exists a plain, speedy and efficient Remedy for relief in the courts of such a state. The most simplistic definition of a law, cannot allow for the Compacts to be admitted as law. The Compacts lack legislative sposorship and passage, the Compacts lack executive signature and

sanction, and the Compacts are not to be found anywhere in the statutes of the Ohio Revised Code. By the first requirement of the tendem meaning of the Act, the test fails, since the Compacts are not law, and the Act is not a bar to federal jurisdiction.

The second meaning of the tendem of the Act is that a plain, speedy and efficient remedy exists in the courts of such a State. Only state laws, with listing in the revised codes have protective applealative provisions for the citizens of the State. An example is the Ohio Revised Code, Section 5739.13, wherein provisions are listed for appeal, reassessment and etc. No such remedies exist in the body of the Compacts for the protection of due process of the law for the seller and the buyer. By the second requirement of the tendem meaning of the Act, the test again fails, and the Act is not a bar to federal jurisdiction.

Furthermore, a second test to the remedy

of the Act can be invoked. For example, an Ohio buyer of out of state goods is assessed a use or sales tax by another state as a result of the Compact provisions. The plain, speedy and efficient relief of the Ohio buyer does not exist for hism in the State of Ohio, since the tax law invoked as authority for the assessment is from another state, wherein an Ohio buyer has no standing or residency. Again, by this second test of the tendem meaning of the Act, the test fails, and the Act is not a bar to federal jurisdiction.

In the light of the above tests, this Court plainly must allow federal jurisdiction in this Petition for Review, and order appropriate action in this case by the lower district courts.

CONCLUSION

Based on the foregoing argument and test of the tendem meaning of the Act, the Petitioner Jerry Hegedus begs this Court allow this writ and rule in favor of federal jurisdiction in the case of the Great Lakes Interstate Sales Compacts and order the District Court to hear the original complaint.

Respecfully Submitted

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APPENDIX

Court Orders Sought to be Reviewed .

1. 2 October 1990, Order of the United States Court of Appeals for the Sixth Circuit A-1

2. 22 December 1989, Order of the United States District Court, for the Southern District of Ohio, Eastern Division A-4

3. Record of Entries A-9

No. 90-3060

United States Court of Appeals

For the Sixth Circuit

Jerry Hegedus, :

Plaintiff-Appellant

vs. : Filed 2 Oct. 1990

Joanne Limbach

Defendant-Appellee. Order

:

Before:Keith and Guy, Circuit Judges and Lively, Senior Circuit judge.

Jerry Hegedus, a pro se Ohio resident, appeals the district court's dismissal of his civil complaint filed pursuant to 28 U.S.C. Sec. 1343. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking declaratory relief, Hegedus filed suit against the Commissioner of the Ohio Department of Taxation challenging the

the constitutionality of the Great Lakes Interstate Sales Compact. The Compact is an agreement executed by several states, including Ohio, which is designed to increase compliance with each state's sales and use tax laws. The defendant filed a motion for judgment on the pleadings pursuant to Fed.R. Civ. P. 12(c), and Hegedus responded. Thereafter, the district court granted the defendant's motion and dismissed the action, finding that the Tax Injunction Act, 28, U.S.C. Sec. 1341, was a complete bar to federal jurisdiction.

On Appeal, Hegedus reasserts his claim and argues that the Tax Injunction Act was inapplicable in this case because interstate compacts do not fall into the category of state laws.

Upon review, we affirm the district court's judgment. An order from the district court declaring the Compact unconstitutional would interfere with the participating states'

ability to collect information used to assess taxes on out-of-state vendors. Thus, the action is barred by the Tax Injunction Act. See California v. Grace Brethren Church, 457 U.S, 393, 408 (1982); In re Gillis, 836 F.2d 1001, 1003 (6th Cir. 1988). Moreover, Hegedus' state remedies are plain, adequate, and complete because under Ohio law, he has the right to challenge any assessment before the Ohio Tax Commissioner, the Board of Tax Appeals, and the Ohio state courts. See Ohio Rev. Code Sec. 5717.02 and 5717.04. Hegedus can also raise any constitutional objection he has during those state proceedings. See South-Western City Schools v. Kinney. 24 Ohio St. 3d, 184(1986).

Accordingly, the district court's judgment is hereby affirmed pursuant to Rule 9(b)(5), Rules of the Sixth Circuit.

Entered by order of the court.

In The United States District Court
For The Southern District of Ohio
Eastern Division

Jerry Hegedus :
Plaintiff, No. C2-89-305
vs. : Judge Graham
Joanne Limbach,
Defendant. :

ORDER

This matter is before the Court on the defendant's motion for judgment on the pleadings. The issues presented by this motion are identical to the issues decided by Judge Holschuh in Dr. John S. Skuratowicz v. Joanne Limbach, Case No. C2-87-1174. In that case, Judge Holschuh issued the following Memorandum and Order on May 23, 1988:

> Plaintiff brings this action under the provisions of the United States Constitution, seeking to have an Ohio Compact Agreement held unconstitutional. This matter is before the Court on

defendant's motion to dismiss.

The complaint alleges that the chief executive officers of tax admistrations agencies of various states have entered into compacts which violate the constitutional right of taxpayers. Defendant explains that these compact are agreements entered into by the taxing authorities of several states, the function of which is to permit the exchange of information to facilitate the collection of sales taxes from out of state sellers. In his five count complaint, plaintiff seeks an order from this court declaring the agreements to be unconstitutional and void, on the grounds that such agreements violate the Commerce Clause, and the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.

Defendant has moved to dismiss this action on the ground that this Court lacks subject matter jurisdiction over the claims in the complaint.

The Tax Injuction Act, 28 U.S.C. Sec. 1341 Provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy and efficient remedy may be has in the courts of such state.

The Tax Injucntion Act is a complete bar to federal court jurisdiction even in cases wherein state taxes are alleged to be unconstitutional. Schneider Transport, Inc. v. Catanch, 657, F.2d 128, 131 (7th cir 1981), cert. denied, 455 U.S. 909 (1982); Huber Pontiac v. Whitler. 585 F.2d 817 (7th cir. 1978). The Act applies regardless whether plaintiff is seeking an injunction against collection of state taxes or a declaratory judgment holding state tax laws unconstitutional. California v. Grace Brethren Church, 457 U.S. 393, (1982). Although plaintiff is not directly challenging a state law which imposes a specific tax, it is clear that an order declaring the interstate compacts unconstitu-

tional would interfere with the various tax commissioners' collecting information used in the assessment and collection of state use taxes from persons who purchase items from out of state vendors. Because plaintiff is seeking federal court interference with the assessment and collection of state taxes, the Court is without jurisdiction to consider his claims unless plaintiff has no "plain, speedy and efficient remedy" in the state courts.

A state court remedy is plain, speedy, and efficient within the meaning of the Tax Injunction Act if it provides the taxpayer with a full hearing and judicial determination at which the taxpayer may raise any and all constitutional objections to tax. California v. Grace Brethren Church, 457 U.S. at 411, quoting Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981). Although plaintiff has never been assessed any taxes based upon the information gained from the compacts, under state law he has the right

to challenge such assessments before the Ohio Tax Commissioner, the Board of Tax Appeals, and the state courts. Plaintiff has the right to raise any constitutional challenges at every stage of those proceedings. Southwestern City Schools v. Kinney, 24 Ohio St. 3.d, 184 (1986). " The Act contemplates nothing more." Rosewell, 450 U.S. at 516, n. 19.

Since plaintiff has an adequate state remedy for resolution of his claims, this Court lack subject matter jurisdiction over his complaint. Defendant's motion to dismiss is granted.

It is so ordered.

This Court hereby adopts Judge Holschuh's reasoning and on that basis, finds that defendant's motion to dismiss is well taken and the same is hereby granted.

It is so ordered.

RECORD OF ENTRIES

Jerry Hegedus :
Petitioner,
vs. :
JOanne Limbach No. 89-0305
Respondent. : No. 90-3060

ENTRY	DATE	RECORD
Original Complaint	6 Apr. 89	1
Plaintiff's Answer	2 June 89	3
Pre-trial Conf. order	25 June 89	4
Post Conference order	24 Aug. 89	5
Notice of Final Conf.	19 Oct. 89	6
Order to Mediation	26 Oct. 89	7
Def. Motion to vacate Med.	15 Nov. 89	8
Def. Motion for Judgment	15 Nov. 89	9
Order Vacating Mediation	15 Nov. 89	10
Settlement Demands	16 Nov. 89	11
Plaintiff's Ans. to Vacate	24 Nov. 89	12
Plaintiff's Ans. Judgment	24 Nov. 89	13
Judgment	22 Dec. 89	14
Appeal	16 Jan. 90	15
Appellant's Brief	7 Feb. 90	16
Brief of Appellee	15 Mar. 90	17
Appellant's Answer	30 Mar. 90	18
Court of Appeals Judgment	2 Oct. 90	19